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FEB - 4 2004

February 4, 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

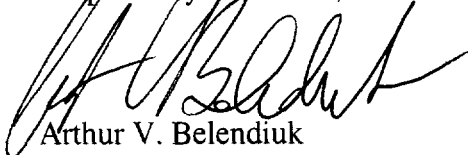
Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: WorldCom, Inc. and MCI, Inc., WC Docket 02-215
Consolidated Application for Review

Dear Ms. Dortch:

On January 20, 2004, counsel for Margaret F. Snyder, filed two Consolidated Applications for Review; one "Confidential Document" version and one redacted version. The FCC has requested counsel for Margaret F. Snyder to serve copies of that document on counsel for Bell South Telecommunications, Inc., Verizon and SBC Communications. We are doing so herewith.

Respectfully submitted,



Arthur V. Belendiuk

Counsel for Margaret F. Snyder

AVB/sls

Enclosure

Cc with enclosure: Stephen L. Earnest, Esquire
Counsel for BellSouth Telecommunications, Inc.
Ann H. Rakestraw, Esquire
Counsel for Verizon
James Lamoureux, Esquire
Counsel for SBC Communications, Inc.

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Before the
Federal Communications Commission
Washington, DC 20554

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FEB - 4 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re application of:)
)
WORLDCom, INC., and its Subsidiaries as)
DEBTOR IN POSSESSION)
Transferor)
)
AND)
)
MCI, INC., and its Subsidiaries)
Transferee)
)
For consent to transfer of control of licenses and)
authorizations held by WorldCom in bankruptcy)

WC Docket 02-215

To: The Commission

CONSOLIDATED APPLICATION FOR REVIEW

Margaret F. Snyder, by her attorneys, hereby applies for review by the Commission, pursuant to Section 1.115 of the Commission's Rules, of the three related letter decisions ("Decisions"), DA 03-3844¹, 3845² and 3846³, released December 19, 2003, whereby the Wireless Telecommunications Bureau ("WTB") dismissed as moot Ms. Snyder's Fourth and Sixth Supplements to her Petition for Deny.⁴ As set forth herein, the Commission should review the action taken by the WTB under delegated authority

¹ Letter Decision concerning BellSouth Corporation ("BellSouth").

² Letter Decision concerning Verizon.

³ Letter Decision concerning SBC Telecommunications, Inc. ("SBC").

⁴ This Application for Review is timely filed within 30 days of the date of the WTB's action as required by Section 1.115(d) of the Commission's Rules.

and deny the licenses, authorizations, and certifications of WorldCom, Inc., which is the subject of the captioned docket.

QUESTION PRESENTED

Whether it was error for the WTB to find that there was insufficient evidence to conclude that BellSouth, Verizon and SBC made the types of threats covered by Section 1.935 of the Rules;

Whether it was error for the WTB to find that there was insufficient evidence to conclude that BellSouth, Verizon and SBC, in exchange for financial consideration from WorldCom, agreed not to file petitions to deny or other pleadings in violation of Section 1.935 of the Rules;

In light of the foregoing, whether it was error for the WTB to find that the agreements among WorldCom, BellSouth, Verizon and SBC are not covered by Section 1.935 of the Rules.

FACTORS WARRANTING COMMISSION CONSIDERATION

The action taken by the WTB under delegated authority is in conflict with Section 1.935 of the Commission's Rules (Factor 1.115(b)(i));

The action taken by the WTB under delegated authority involves the application of a precedent or policy which should be overturned (Factor 1.115(b)(iii)); and

The action taken by the WTB under delegated authority involves an erroneous finding as to an important or material question of fact (Factor 1.115(b)(iv)).

RELIEF REQUESTED

The Commission should reverse the action of the WTB and designate WorldCom's applications for hearing to determine whether WorldCom violated Section 1.935 of the Commission's Rules.

SUMMARY OF PROCEEDING

On October 15, 2003, Ms. Snyder filed a Fourth Supplement to her Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc. She

also made a request to inspect documents. On November 4, 2003, the WTB issued a *Protective Order*, which enabled Ms. Snyder's counsel to review certain documents. On December 1, 2003, Ms. Snyder filed a Sixth Supplement to her Petition. As the WTB notes in its Decisions, Ms. Snyder alleged that WorldCom abused the Commission's processes by inducing BellSouth, Verizon and SBC to withhold information from the FCC and requested the WTB to investigate whether the settlement agreements with BellSouth, Verizon and SBC violate Section 1.935 of the Commission's Rules.

Counsel's review of the settlement agreements revealed that the settlement agreements contain provisions whereby BellSouth, Verizon and SBC agreed not to assert oppositions to the above-referenced applications in return for monetary consideration. As a result, those agreements required prior Commission approval.

Ms. Snyder argued that the BellSouth Settlement Agreement provides an example. The Affidavit of Mary Jo Peed, General Counsel of BellSouth, includes the following statement, '[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Verizon Settlement Agreement provides that WorldCom will pay [REDACTED]

[REDACTED]

The SBC Settlement Agreement provides that WorldCom will pay [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SBC's November 13, 2003, publicly filed letter, states that the Settlement Agreement provides for a "substantial monetary recovery on SBC's claims." This, according to SBC "may be misconstrued by other creditors of WorldCom." Thus, it appears that SBC was able to negotiate a substantially better settlement than other WorldCom creditors. The settlement agreements contain provisions barring BellSouth, Verizon and SBC from filing a Petition to Deny in the above referenced proceeding, or otherwise opposing WorldCom's attempts to transfer control of its licenses and authorizations from its pre-bankruptcy entity to its post-bankruptcy entity.

Clearly, WorldCom paid BellSouth, Verizon and SBC for their silence. This explains why they were able to get a substantial monetary recovery that may be "misconstrued" by other creditors. While the exact dollar amount paid for the silence of BellSouth, Verizon and SBC is not explicit, there can be no doubt that the BellSouth, Verizon and SBC were well paid for their silence. The declaration of John H. Atterbury,

SBC's Group Vice President is instructive. Therein he states [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (emphasis added) Mr. Atterbury's declaration falls far short of the requirements of Section 1.935(b)(1) which calls for an affidavit specifically stating that WorldCom has not paid SBC any money or other consideration in excess of SBC's legitimate and prudent expenses. In fact, each of BellSouth, Verizon and SBC in essence claims that it was paid no more than what it was owed. This, however, is a bankruptcy case and the question is not what BellSouth, Verizon and SBC were owed, but rather what were they entitled to receive in the bankruptcy proceeding. There is a simple formula that can be applied to provide a working estimate of what BellSouth, Verizon and SBC were entitled to obtain in the bankruptcy proceeding. The Commission should take the funds received and to be received by BellSouth, Verizon and SBC and multiply that by the percentage that other creditors of WorldCom received. Published reports indicate that WorldCom's bondholders will receive 36 cents on the dollar; other unsecured creditors will receive less. In this case, BellSouth, Verizon and SBC each received almost the full amount of their claims, including their executory contract claims. Applying this formula, if WorldCom bondholders received 36% of their total claims, BellSouth, Verizon and SBC should have received 36% or less of their claims. Under that hypothesis, any amount over 36% is the amount that BellSouth, Verizon and SBC received for their silence in clear and blatant violation of Section 1.935 of the Commission's Rules.

ARGUMENT

Section 1.935 provides, in pertinent part, "Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission."⁵ Section 1.935(c) provides that "No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application." Section 1.935(c) and (d)(1)-(4) set forth the specific requirements for compliance in the case of a settlement. In the case of BellSouth, Verizon and SBC, they all received payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny,

⁵ Section 1.935(c) provides: No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(d) For the purposes of this section:

- (1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.
- (2) Each application, petition to deny, informal objection or other pleading is deemed to be pending before the Commission from the time the petition to deny is filed with the Commission until such time as an order or correspondence of the Commission granting, denying or dismissing it is no longer subject to reconsideration by the Commission or to review by any court.
- (3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.
- (4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

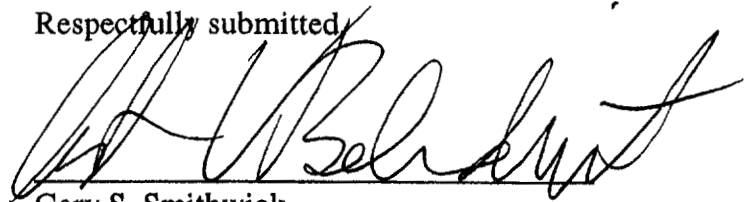
informal objection, or some other pleading against WorldCom's applications. The settlement agreements were belatedly filed with the Commission, after the Bankruptcy Court approved them. There is no provision in any of the settlement agreements requiring prior approval of the FCC as required by Section 1.935 of the Commission's Rules. There was no reason to include such a provision since the Commission cannot approve what is already a done deal. The plain language of Section 1.935 of the Rules requires the agreements to be filed with the Commission, and Commission approval of them. However, they were not.

WorldCom has a history of paying hush money.⁶ It appears that WorldCom paid BellSouth, Verizon and SBC an illegal premium above what other legitimate creditors could expect to receive in return for BellSouth, Verizon and SBC's promises not to disclose information to the FCC, not to file a petition to deny or otherwise not to interfere in WorldCom's attempts to transfer its licenses. Faced with this overwhelming evidence of violation, the WTB found that "there is insufficient evidence to conclude that [BellSouth, Verizon and SBC] made the type of threat covered by Section 1.935 and therefore, the agreement is not covered by the rule." This was plainly error and must be reversed on review.

For the reasons stated herein, the Commission should review the action of the
WTB, reverse it, and designate WorldCom's applications for evidentiary hearing.

Respectfully submitted,

By:

A handwritten signature in dark ink, appearing to read 'A. Belendiuk', written over a horizontal line.

Gary S. Smithwick
Arthur V. Belendiuk
Counsel to Margaret F. Snyder


Smithwick & Belendiuk, P.C.
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(202) 363-4050

January 20, 2003

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Consolidated Application for Review" was mailed by First Class U.S. Mail, postage prepaid, this 20th day of January, 2004, to the following:

Dennis W. Guard, Esquire
1133 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for WorldCom, Inc.


Sherry L. Schunemann
Sherry L. Schunemann